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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Judgment reserved on: 29.07.2025**Judgment pronounced on: 14.08.2025*+ **CO.APP.26/2023 & CM APPL.56799/2023 (for stay)**

IDBI BANK LTDAppellant

Through: Mr. Praful Jindal and Mr.
Sidhartha Barua, Advocates

versus

P D GUPTA AND COMPANYRespondent

Through: Mr. Vivek Gupta, Mr. Ankit
Verma and Mr. Govind Gupta,
Advocates**CORAM:****HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR****J U D G M E N T****HARISH VAIDYANATHAN SHANKAR, J.**

1. The present Company Appeal has been preferred under Section 483 of the **Companies Act, 1956**¹, read with Rule 9 of the Companies (Court) Rules, 1959, challenging the **Order dated 21.07.2023**² passed by the learned Single Judge of this Court in Co. Appl. 1004 of 2014 titled as "IDBI vs. P.D. Gupta & Company" in Co. Pet. 72 of 1997.

2. By the Order impugned herein, the learned Single Judge has directed the Appellant to refund a sum of Rs. 1 Crore along with simple interest at the rate of 7% from the date of deposit till the date

¹ Companies Act

² Impugned Order



of its payment, to the Respondent herein. It has also been directed that the said payment be made by the Appellant herein within a period of two months. The relevant portion of the Impugned Order reads as follows:

“CO.APPL. 1004/2014 (for impleadment and permission)

2. This is an application where the Applicant-P.D Gupta & Company is seeking refund of the amount of Rs.1 crore which was deposited with IDBI along with interest. The Applicant also prays for impleadment as a Respondent, and permission to participate in the present petition.

3. Ld. Counsel for the Applicant relies upon a similar order dated 3rd April, 2013 which was passed by ld. Single Judge wherein refund of an amount was directed from IDBI. The said order reads as follows:

“The question that has now arisen is whether IDBI can be permitted to retain the said amount or should it be asked to refund it to the Applicant. The stand of IDBI is that since the payment was made to it by MSL, it is not obliged to return the money to RSCS. It is, however, not denied by IDBI that it did receive the money from RSCS. Its stand is that it has no obligation to return the money to RSCS since the payment was made on behalf of MSL.

8. *The stand of Official Liquidator is that since the payment made by RSCS is not pursuant to any scheme sanctioned by the Court and, in any event, the claims of the secured lenders will be dealt with in accordance with law pursuant to the orders that the Court may pass from time to time.*

9. *The above stand of IDBI is untenable for the simple reason that IDBI admittedly encashed the cheque by MSL only as a lead institution participating in an OTS along with other secured lenders. The OTS admittedly has not gone through with IFCI not agreeing to it. **In the circumstances, there can be no justification for IDBI to continue to hold the amount of Rs. 2.25 crores. The Court has not approved the OTS in the present proceedings and so the question of the Court permitting IDBI to retain the said sum does not arise. Further, as regards the dues of the secured creditors, the funds generated through the sale of the properties of MSL pursuant to the orders of the Court will be distributed amongst the secured creditors on a pro rata basis. That will sufficiently account for the interests of all the***



secured creditors. IDBI is not entitled to a treatment different from other secured lenders”.

4. In the present application, A 'One Time Settlement' ('OTS') was agreed upon by the secured creditors following a Memorandum of Understanding ('MOU') dated 30th March 2001. This MOU was between the potential buyers and representatives of the secured creditors, specifically MSL and IDBI. However, the potential buyer failed to make the necessary payments to the secured creditors. Consequently, the Applicant assumed the role of the potential buyer and agreed to purchase the total land of the Petitioner-company in liquidation for a sum of Rs. 6 crore in 2005. The case of the Applicant is that pursuant to OTS which was agreed, the Applicant had paid a sum of Rs. 1 crore which was deposited with IDBI. In pursuance of the Applicant's offer, it is stated the Applicant submitted various DD's to fulfil its obligation to pay the OTS amount before the end of October 2005. At the time of payment of the OTS amount it is stated that the Applicant was unaware of a dispute over the ownership of the subject land.

5. Thereafter, the Applicant made a request to the Petitioner-Company and IDBI for the return of their deposited amount of Rs. 1 crore plus interest, as the OTS was not sanctioned by all the banks and due to pending civil cases on the subject land, it was stated by the Applicant that it found it impossible to pursue their OTS proposal. Subsequently, the Applicant sent a legal notice on 20th October 2008 to IDBI, stating that the bank was liable to return the Rs.1 crore to the Applicant. The Applicant also claimed that the IDBI was wrongfully withholding their money, and demanded a return of the advanced deposit amount of Rs. 1 crore, plus interest at 1.8% from 21st October 2005 until the date of payment.

6. Thus, under such circumstances, the refund is being sought of the amount being deposited. In the reply dated 21st March 2015, the only stand of IDBI appears to be that the refund cannot be sought in the present petition. It is not disputed in the reply filed by IDBI that the amount was indeed paid by the Applicant.

7. Under such circumstances, there appears to be no justifiable reason for the IDBI to argue that the amount ought not to be refunded. Since the OTS has not gone through, the amount of the Applicant which was deposited towards the finalisation of the OTS cannot be appropriated in this manner by IDBI.

8. The same is accordingly directed to be refunded along with simple interest @ 7% from date of deposit till the date of payments. The entire payment be made by IDBI within two months.

9. In the above terms, the present application is disposed of.”



3. Learned counsel for the Appellant apprised this Court of the entire historical background of the dealings between the Appellant-Bank and one **Moradabad Syntex Limited**³. Following the recommendation of the Board for Industrial and Financial Reconstruction under Section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, for winding up MSL, a company petition bearing Company Petition No. 72/1997 (from which the present appeal arises) was registered before this Court.

4. MSL submitted a **One-Time Settlement**⁴ proposal to the Appellant, which was accepted *vide* Sanction Letter dated 30.03.2001. A **Memorandum of Understanding**⁵ was executed amongst MSL, the Appellant and potential buyers. On 02.11.2001, the scheme filed by MSL was sanctioned. However, the initial buyer failed to perform its obligation *qua* the MOU. Thereafter, in 2005, the Respondent herein offered to become a potential buyer of the total land of MSL in liquidation for a sum of Rs. 6 crores and, in pursuance thereof, a sum of Rs. 1 crore was paid by the Respondent to the Appellant.

5. It is the case of the Respondent that at the time of payment, the Respondent was unaware of a dispute over the ownership of the subject land. Upon learning that the OTS lacked all banks' approval and that civil disputes were pending over the land, the Respondent requested a refund from the Appellant-Bank. Subsequently, the Respondent sent a legal notice dated 20.10.2008 to Appellant-Bank, claiming that Appellant-Bank has wrongfully withheld the deposit and

³ MSL

⁴ OTS

⁵ MOU



demanded the return of the advanced amount along with interest from 05.10.2005 till the date of payment.

6. The Respondent herein filed a company application bearing Company Application No. 1004/2014 in the aforementioned company petition, seeking a refund of the amount of Rs. 1 crore as deposited with the Appellant-Bank along with interest, which was allowed by the Order impugned herein.

7. Against the said Order, the present appeal has been filed.

SUBMISSIONS OF THE PARTIES:

8. The crux of the Appellant's submissions is that the Respondent herein had, in some manner, stepped into the shoes of MSL and, therefore, the amount paid by the Respondent herein was in the nature of assumption of MSL's debt by it or at least a part thereof.

9. Learned counsel for the Appellant would also contend that after having stepped into the shoes of MSL, the Respondent herein, despite having made a payment of Rs. 1 Crore, rescinded from the commitment and, therefore, the payment made stood forfeited, being not entitled to the repayment of the same.

10. This Court also notes that it has been the consistent case of the Appellant-Bank that the amount paid by the Respondent herein was appropriated by it, purely on the strength of a Letter dated 27.01.2006 addressed by MSL to the Appellant-Bank. The relevant part of the said Letter is set out hereinbelow:-

“ ...

Dear Sir,

Please refer to your letters dated October 4, 2005 and January 14, 2006 on the above subject. The balance OTS money of Rs.285 lakh has not been paid by the third party viz. P. D. & Company due to court case pending against the land in the Muradabad local court



and the titles of the land could not be created. The next hearing on the said case is on 1st February 2006 and we hope the same will be dismissed. The party had already made an advance of Rs. 1 crore to IDBI out of the above OTS amount. We request IDBI to adjust the amount of Rs. 1 crore kept with IDBI towards OTS against IDBI's dues and the balance amount of Rs 49.55 lakh payable to IDBI would be paid by the party immediately after settlement of the court case. In case there is further delay in court settlement, and payment of IDBI's dues by PD & Co., I personally undertake to pay this amount of Rs.49.55 Lakh to IDBI before February 27, 2006. I further request IDBI to kindly waive the interest on OTS amount from December 1, 2005 to February 27, 2006. This would help me to settle the amount with IDBI. The balance amount for payment to other institutions will be followed separately since the case is not finalized.”

11. The Appellant would also seek to refer to and rely upon a document dated 13.02.2015 addressed by Mr. Arun Kumar Swarup, the Director/Promoter of MSL and in particular, paragraph No. 6 thereof along with alleged bank statement supporting the said letter, to resoundingly claim that the said letter conclusively proves that the amount of Rs.1 Crore was paid to the Appellant-Bank by MSL, and therefore, no claim can be maintained against the Bank. Paragraph No. 6 of the letter reads as follows:

“ ...

6. That M/s Chauhan & Co. defaulted in paying the remaining amount under the MOU. Thereafter, MSL brought a new purchaser namely M/s P.D. & Co. (PDC), who agreed to buy the land for a total consideration of Rs.6 crore in October 2005 and MSL submitted the revised OTS proposal to the secured creditors. But, despite of the prolonged discussions and negotiations, the revised proposal was not accepted by all the secured creditors. M/s P D Gupta & co. deposited a sum of Rs 1 Crore pursuant to the Proposal. The said amount of Rs. 1 Crore was paid back by MSL vide four cheques of Rs 25 lacs each. The detail of the four cheques are as follows:-

i) Cheque bearing no. 12342 for a sum of Rs 25 lacs dated 19/06/2007. drawn on Adarsh Mahila Mercantile Coop. Bank, Muzaffarnagar.



ii) Cheque bearing no. 12343 for a sum of Rs. 25 lacs dated 20/06/2007 drawn on Adarsh Mahila Mercantile Coop. Bank, Muzaffarnagar.

iii) Cheque bearing no. 12344 for a sum of Rs. 25 lacs dated 22/06/2007 drawn on Adarsh Mahila Mercantile Coop. Bank, Muzaffarnagar.

iv) Cheque bearing no. 12345 for a sum of Rs. 25 lacs dated 23/06/2007 drawn on Adarsh Mahila Mercantile Coop. Bank, Muzaffarnagar.

The said cheques were duly encashed by M/s P D Gupta & co, (A copy of the bank statement is attached).

In view of the above, it is humbly requested to IDBI that payment already received may kindly be treated as payment in full and final settlement of their dues, whatsoever, and that the pending recovery case/s please be withdrawn by IDBI and that the personal guarantee of the Guarantors/former Directors may please be released, without insisting on any further payment.”

12. *Per contra*, learned counsel for the Respondent has opposed the contentions of the Appellant by stating that there is no occasion for the Respondent to have stepped into the shoes of MSL, as claimed by the Appellant.

13. Learned counsel for the Respondent would also contend that the history of litigation would suggest that the Respondent herein was a complete stranger in the transactions between MSL and the Appellant Bank. He would contend that the Offer made by the Respondent herein in 2005 was a standalone offer which never fructified, and as the OTS proposal did not go through, the Respondent was entitled to the return of the money that had been paid by it to the Bank.



ANALYSIS:

14. At the outset, it is of import to note that the main *dramatis personae* of the entire *lis* appear to be the Appellant-Bank and MSL.

15. It is indeed surprising that the Appellant-Bank seeks to rely on a Letter dated 27.01.2006 from MSL, treating it as an authorisation to appropriate a sum of Rs. 1 Crore towards MSL's defaulted account, purportedly in part satisfaction of the amount MSL owed to the Bank. There is nothing on record to indicate or substantiate that the Respondent was either aware of or had consented to such appropriation by the Appellant-Bank.

16. The Letter dated 13.02.2015, also issued by MSL, appears to be self-serving and unreliable. The accompanying bank statement, filed in support of this letter, is also *sans* any specific details indicating to whom the said payment was made. In the given circumstances, it is difficult to comprehend how the said letter, along with the vague bank statement, could come to the aid of the Appellant-Bank.

16. This Court further notes that the contention regarding the Respondent having stepped into the shoes of MSL appears to be a construct of the Appellant's counsel and finds no mention in the pleadings. In fact, this argument is at variance with the stand earlier taken by the Appellant-Bank before the learned Single Judge, wherein at paragraph No. 6, it states as follows:

“6. Thus, under such circumstances, the refund is being sought of the amount being deposited. In the reply dated 21st March 2015, the only stand of IDBI appears to be that the refund cannot be sought in the present petition. It is not disputed in the reply filed by IDBI that the amount was indeed paid by the Applicant.”

17. The learned Single Judge, while directing the refund of the money paid by the Respondent herein, has referred to and relied upon



Order dated 03.04.2013 passed in Co. Appl. No. 2430 of 2011 in the same Company Petition. The said Order pertained to a similarly placed prospective buyer, who had been introduced by MSL after the present Respondent's offer was rejected, and the transaction was abandoned due to defects in the title of the property.

18. The Appellant, through his arguments, seeks to establish that the Court has accepted the case of the Respondent of having momentarily stepped into the shoes of the MSL and made a payment, and there existed no separate or independent proposal as between the Respondent and Appellant-Bank. However, as already observed hereinabove, this contention not only contradicts the submissions recorded by the learned Single Judge but is also not borne out from the pleadings in the present appeal.

19. In view of the foregoing, and considering that the Respondent stood on similar footing as the party who entered the picture at a later stage, this Court is of the view that the Appellant's claims lack merit. Accordingly, the Impugned Order does not warrant interference.

20. The appeal, along with the pending application(s), if any, stands dismissed.

ANIL KSHETARPAL
(JUDGE)

HARISH VAIDYANATHAN SHANKAR
(JUDGE)

AUGUST 14, 2025/rk/er/va